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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the Asia Forum on Business and Human Rights

Note by the Secretariat

The present report provides a summary of the discussions held at the first United Nations Asia Regional Forum on Business and Human Rights, which took place from 19 to 20 April 2016 in Doha, Qatar. It was convened by the Working Group on the issue of human rights and transnational corporations and other business enterprises in collaboration with the Office of the UN High Commissioner for Human Rights. The Asia Regional Forum programme, session concept notes, statements and written submissions are available on the Forum website: www.ohchr.org/2016AsiaRegionalForum.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the Asia Forum on Business and Human Rights*

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* Reproduced as received.

I. Introduction

1. The United Nations Asia Regional Forum on Business and Human Rights ("Asia Forum") was held from 19 to 20 April 2016 in Doha, Qatar. It was convened by the Working Group on the issue of human rights and transnational corporations and other business enterprises ("the Working Group") in collaboration with the Office of the UN High Commissioner for Human Rights (OHCHR).

2. The Asia Forum attracted some 400 participants from 60 countries with the programme covering 30 different sessions. The programme included:

- two plenary sessions (opening and closing)
- four training sessions
- 20 parallel sessions led by the Working Group and OHCHR, including four sub-regional sessions and
- four sides sessions organized by external stakeholders.

3. The Working Group decided in November 2012 to organize regional Forums to complement the annual Forum on Business and Human Rights.[1] The Asia Forum followed the 2014 Africa Regional Forum and the 2013 Latin America & Caribbean Regional Forum.[2]

4. In June 2014, in its resolution 26/22, the Human Rights Council welcomed the work of the Working Group in the fulfilment of its mandate, including the convening of regional forums to discuss challenges and lessons learned from the implementation of the Guiding Principles on Business and Human Rights[3] with States and other stakeholders in a regional context.

5. The Working Group is grateful to the Government of Qatar for its support of the Asia Forum.

II. Participation

6. The Asia Forum attracted 400 participants from 60 countries. The large majority came from and worked in Asia.

Registration by stakeholder category	
Business (companies 16 %, business associations 6%, law firms 4%, consultancies 4%)	28 %
NGOs, community members, migrant workers and academia	39 %
National human rights institution	1 %
State	3 %
Trade Union	2 %

[1] See outcome of the third session of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/WG.12/3/1, para. 17.

[2] See http://www.ohchr.org/EN/Issues/Business/Forum/Pages/2013ACRegionalForumBusinessandHumanRights.aspx and http://www.ohchr.org/EN/Issues/Business/Forum/Pages/AfricaRegionalForum.aspx.

[3] "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", Annex to A/HRC/17/31.

Registration by stakeholder category	
UN/Inter-governmental organization	5 %
Other	5 %

III. Focus of the Forum

7. The Asia Forum programme[1] focused on the three pillars of the Guiding Principles on Business and Human Rights ("the Guiding Principles"):

(i) The State duty to protect human rights against business-related impacts;

(ii) The corporate responsibility to respect human rights;

(iii) The need for effective remedy for victims of business-related human rights abuse.

8. During the two-day conference, participants explored the salient business and human rights issues across Asia, and they identified areas at the national level where accelerated action is needed by States and companies to prevent and address business-related human rights harm.

9. Salient issues discussed at the Asia Forum included:

- the rights of migrant workers
- impacts of large-scale land acquisitions
- garment sector supply chains
- forced and child labour and human trafficking
- the right to privacy in the digital domain
- access to remedy through judicial and non-judicial mechanisms
- mega sporting events
- human rights defenders
- indigenous peoples' rights.

10. Participants also discussed the national and regional application of global business and human rights issues, such as national action plans (NAPs), corporate human rights reporting, corporate human rights due diligence, multi-stakeholder engagement, and the role of the State as an economic actor.

11. Given the diversity of issues across the Asia region - which spans from Saudi Arabia in West Asia, to Indonesia in Southeast Asia, and Japan in East Asia - some sessions had a sub-regional, rights-based and/or sectoral focus in order to examine problems and identify solutions in a concrete manner.

[1] Programme:
http://www.ohchr.org/Documents/Issues/Business/AsiaForum/ProgrammeWithSpeakers.pdf

IV. Opening plenary

12. The opening plenary included introductory statements by the Working Group, the Government of Qatar and the Office of the High Commissioner for Human Rights.

13. Dante Pesce, chair of the Working Group,[5] emphasized the growing convergence around the Guiding Principles in other key international frameworks and initiatives for responsible and sustainable business, including their relevance in the context of implementation of the 2030 Agenda for Sustainable Development. He also highlighted notable uptake of the Guiding Principles in Government policy frameworks; in corporate policies and processes; in reporting and benchmarking initiatives; and by other stakeholders that shape company performance such as investors. While encouraged by this progress, the Working Group expressed concern that business-related human rights abuses continue to occur with seeming impunity, including in Asia. Two major trends were highlighted:

(i) Progress on both judicial and non-judicial remedy for business-related human rights harm remains elusive with limited progress;

(ii) The growing clampdown on human rights defenders and trade unions leaders who raise concerns about the impacts on workers, communities and the environment of government and corporate abuse of power – also well documented in relation to many Asian countries.

14. The Working Group underlined the need to speed and scale up implementation of the Guiding Principles, emphasizing the respective obligations and responsibilities of Governments and business enterprises. It also made the case for Asian Governments and businesses to step up their efforts, noting that implementation of the Guiding Principles presents an opportunity to ensure that business operations and economic development projects do not undermine human rights – and by extension, the social sustainability of Asia's economic "miracle". It emphasized two concrete areas where States, in particular, can ensure greater progress and coherence:

(i) The need for States to "lead by example" and implement the Guiding Principles in the context of their role as economic actors (e.g. with regard to State-owned enterprises).

(ii) The expectation that all Governments take steps to initiate open, multi-stakeholder processes to develop national action plans (NAPs) to implement the Guiding Principles.

15. John Ruggie, former Special Representative of the United Nations Secretary-General on human rights and transnational corporations and other business enterprises, delivered a keynote address.[6] He explained that business and human rights issues lie at the heart of achieving sustainable business models and the social and economic development of nations. He rebuked the approach of some developing countries that "growth was to come first, and then we can talk about rights" saying that this "belief undermines both human rights and sustainable development." He called on Governments and companies in Asia to invest in people (in their health, education and housing etc.) and embrace transparency and accountability. He also outlined how the Guiding Principles – which he authored – are the global authoritative standard for States and businesses to prevent and address business-

[5] Read the Working Group's Opening Plenary statement
http://www.ohchr.org/Documents/Issues/Business/AsiaForum/OpeningRemarksDantePesce.pdf

[6] To read John Ruggie's statement, visit
http://www.ohchr.org/Documents/Issues/Business/AsiaForum/Keynote_statement_JohnRuggie.pdf

related human rights impacts, and that they have expanded their reach to international national bar associations and major sports organizations. On the latter, he referenced his independent report to FIFA and the human rights issues affecting the 2022 Men's World Cup in Qatar including the use of the "kafala" sponsorship system for the employment of migrant labour.[4]

16. Two panel discussions followed,[5] with the first exploring the role and obligations of States in Asia to protect human rights, and the second examining the responsibilities of companies that operate in the region to respect human rights.

17. In the first panel, speakers from the Government of Indonesia, the Viet Nam National Mekong Commission and the International Trade Union Confederation (ITUC) discussed the steps being taken by some Asian Governments to implement the Guiding Principles, such as through NAPs led by national commissions on human rights and through regulation to promote the corporate responsibility to respect human rights. They also discussed how to prevent, mitigate and remedy adverse human rights impacts in situations of development projects in areas where States share access to land and water. In addition, the importance of safeguarding workers' rights was raised and the need to overcome the contradiction whereby workers may be unable to exercise basic rights, such as engaging in collective bargaining, amid increasing calls to strengthen workers' rights to ensure their consumption of goods and services to allow economies to keep growing. The challenges facing migrant workers from the perspective of "sending" and "receiving" countries were also explored.

18. In the second panel, speakers from the ASEAN CSR-Network, International Organisation of Employers (IOE), the Indonesian Global Compact Network, the Japan Sustainable Investment Forum and the International Federation for Human Rights (FIDH) discussed the main internal and external drivers that are leading more companies that operate in Asia to respect human rights and what needs to happen to speed and scale up business uptake of the Guiding Principles. The efforts of Asian-based NGOs to advocate for companies to act more responsibly were raised, as well as the ongoing clampdown on civil society actors in Asia. As was pointed out, the efforts of human rights defenders to raise concerns about adverse business impacts should be viewed as an early warning system to Governments and companies alike. The speakers also examined the role of investors across Asia to ensure that companies, which demonstrate clear respect for human rights, are rewarded with more capital investment and the importance of bringing human rights to the attention of company directors.

V. Main Forum take-away points with regard to the roles of the key stakeholder groups

19. Given the challenge of capturing the breadth of issues covered in the 30 different sessions, the report presents the main findings from the Forum discussions under the headings of the following key stakeholder groups: (a) States; (b) business; (c) civil society organizations and directly affected stakeholders; and (d) national human rights institution (NHRIs).

[4] Read John Ruggie's report: "For the Game. For the World." FIFA and Human Rights": http://www.hks.harvard.edu/centers/mrcbg/programs/cri/research/reports/report68

[5] See the Opening Plenary panel speakers on the programme: http://www.ohchr.org/Documents/Issues/Business/AsiaForum/ProgrammeWithSpeakers.pdf

A. States

20. Naturally, the first pillar of the Guiding Principles – "the State duty to protect human rights" – featured in every session at the Forum. Overall, participants repeatedly stressed that high-level Government commitment and cross-cutting Government strategy to implement the Guiding Principles are required across Asian countries. More specifically, discussions focused on the following concrete ways that such a Government commitment and strategy can be carried out:

1. National action plans on business and human rights (NAPs):

21. Despite the Working Group and others having urged all Governments to develop a NAP (in the form of a stand-alone document or as part of a related policy document) for a number of years, no Asian government has published a NAP yet.[1] Some Asian countries have a NAP process underway, often led by the national human rights institution (NHRI). However, the region is lagging behind others, especially Europe. Participants discussed how to address the NAP gap in Asia and what steps are needed to lay the ground for a meaningful NAP.

22. Language and labels are very important. Speakers stressed that there remains a need to translate human rights concepts into the local context and that for some Asian Governments - especially their ministries/departments in charge of the economy, finance or business relations - the language of "human rights" is not palatable and they prefer to discuss issues of "governance" rather than "human rights". This makes the development of a NAP challenging in countries that do not consider human rights a key part of development and prosperity. To overcome this, the point was made that the business case for the Government to develop a NAP needs to be spelt out more clearly – including addressing the misconception that growth and protection of human rights are not compatible, as highlighted in the keynote speech. It was noted that leveraging the 2030 agenda for sustainable development in national follow-up processes could provide an avenue for potential synergy and greater awareness of the Guiding Principles.

23. It was also noted that NAP processes need to be tailored to local contexts and realities, such as those in many Asian countries with a prevalence of large informal sectors and small and medium sized enterprises (SMEs). It was underlined that there is no one-size-fits-all NAP and that a NAP can be either a stand-alone document or it can be included in other relevant Government strategies. Therefore, conducting a baseline study was considered essential for the effectiveness of a NAP to ensure that it is tailored to the needs of the country and is forward looking and action-oriented.

24. Participants said that Asian States should be encouraged to develop a NAP when they come under review by fellow States during the Universal Periodic Review (UPR) mechanism of the Human Rights Council.

25. Among the international partners playing a role to promote the development of NAPs across Asia, the Working Group is pleased that UNDP is seeking to be more active in Asia-Pacific by supporting NAP processes, including in building the capacity of NHRIs to serve as "champions" to promote NAPs.

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[1] See list of countries that have developed or are in the process of developing a NAP: http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

2. State as an economic actor / the State-Business nexus

26. States are not only law/policy-makers and regulators, they are also owners of companies, invest in and offer credit to companies, and also procure the services and products of companies. It is a reasonable expectation that States, therefore, should lead by example when it comes to implementing the Guiding Principles with an obvious entry point being with respect to state-owned enterprises (SOEs).

27. Participants discussed how governments should have clearer regulations and policies in relation to SOEs' operations, including human rights due diligence requirements, especially on their activities abroad, and requiring mandatory disclosure on their human rights impacts. States should also ensure that shareholding and ownership policies, corporate governance of SOEs and competition policies are updated and enforced so that SOEs fully respect human rights and set a good example. The Working Group referred to its report to the Human Rights Council on this topic and participants agreed that this area warrants much more discussion and focus.[7]

28. Other areas that require further detailed analysis and guidance concern public procurement; State-owned investment funds, such as pension funds; and public private partnerships (PPPs). There is a need to increase policy coherence and stop the "silo mentality" in all these forms of economic activities.

3. Governance gaps

29. The issue of how governance gaps due to Government failures lead to negative impacts on human rights in the context of business activities was raised in a discussion on land acquisitions. Land governance is, in many countries of Asia, characterized by issues of corruption and lack of transparency. Governments, which benefit from land acquisitions, are often complicit in harms that occur in the acquisition of land and the governance of land use and they are routinely absent in their crucial law enforcement role. Similarly, access to State-based remedy is elusive; private interests and those of investors collide with governments; and affected communities are not consulted.

4. The need to ensure access to remedy for victims

30. It has been consistently noted that the third pillar of the Guiding Principles "access to remedy for victims" is where progress is lacking the most and the pillar that requires urgent focus and implementation. The Asia Forum gave specific focus to the situation facing victims of business-related human rights abuses in accessing an effective remedy and it included discussions on a mix of judicial and non-judicial mechanisms as well as new instruments and tools that are being developed.

31. Speakers outlined the familiar challenges with State-based judicial remedy such as: the lengthy court processes; unequal access to the courts for certain groups such as indigenous communities notably because of the huge expense of mounting and maintaining a legal case, and the deficit in linguistic skills; the lack of judicial independence in some regions across Asia; and intimidation of defendants and fear of reprisals against those making a complaint.

32. The efficacy of non-judicial grievance mechanisms was also discussed. Participants explored whether complaints are better addressed in non-judicial fora, such as mechanisms offered by NHRIs, international financial institutions, labour tribunals, ombudsman offices and national contact points for the OECD Guidelines for Multinational Enterprises. It was

[7] UN Document A/HRC/32/45

agreed that all mechanisms need to be strengthened and that all recourse avenues should be available to victims because the circumstances of the abuse vary from case to case and therefore require different responses.

33. Participants cited examples of bringing cases to both the Compliance Advisor Ombudsman (CAO)[11] and the Asian Development Bank. They noted that while these mechanisms have limits in terms of the remedy they can provide to affected communities, in the context of weak judicial systems and rule of law, they can play a significant role. A key issue for such mechanisms is ensuring trust and that they are seen as independent by all parties involved. Another key issue is how to address the safety and security of complainants, as NGOs that raise concerns are often accused by government actors and others of "inciting people to go against the country's development". Reference was made to a draft CAO report on protection of complainants currently out for public consultation,[12] which includes principles such as confidentiality of complainant and consultation with complainants.

34. A discussion on OHCHR's "Accountability and Remedy Project"[13] — which aims to develop credible and practical guidance to States to enhance accountability and access to remedy for victims of business-related abuses, especially severe abuses — explored cross-border cases, including on access to information, as well as financial barriers for legal representation and the need for clear tests to establish corporate criminal liability.[14] Speakers pointed out that corporate criminal accountability in Asia is still in its infancy with limited political will and poor awareness at the grassroots level to promote and utilize the court system for business-related harms. It was noted that the potential for change is huge. However, this requires legal changes to strengthen corporate criminal responsibility and expanding the scope to include extraterritorial jurisdiction; the protection of victims and defenders that raise complaints; and stronger support from international partners especially with regard to public interest / strategic litigation.

35. Finally, there was a discussion on the inter-governmental process to develop a legally-binding instrument on business and human rights. Participants stated that for an international treaty to work, it needs to make a positive contribution to the lives of rights holders. Unfortunately, there are too many international legal instruments that fail in this regard due to low levels of State ratification and lack of enforcement. It was suggested that the treaty process, therefore, needs to clearly define and understand what the specific problem(s) are that a new treaty would seek to address. It was reiterated that the treaty process needs to be consistent with the Guiding Principles and be built upon the "Protect, Respect and Remedy" Framework. Others pointed out that experience of implementing the Guiding Principles can help identify areas where a treaty can add value. It was noted, however, that there is a risk that the slow process to develop a treaty could equally slow down State implementation of the Guiding Principles. In this regard, participants urged Governments committed to the treaty process to show stronger commitment to implementation of the Guiding Principles, including by developing a NAP and signing up to and ratifying existing labour treaties, such as the ILO Protocol on Forced Labour. Furthermore, it was argued that the treaty negotiating process needs to be fully inclusive and reflect the perspectives of victims, civil society, business enterprises and all

[11] The CAO is the independent recourse mechanism for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA).

[12] http://www.cao-ombudsman.org/documents/ConsultationDraft-CAOApproachtocomplainantsunderthreatApril2016.pdf

[13] http://www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyondomesticlawremedies.aspx

[14] The project recommendations were released after the Regional Forum. See UN documents A/HRC/32/19 and A/HRC/32/19/Add.1.

Governments. The point was also made that it should focus on all business enterprises, including State-owned enterprises, not just TNCs.

5. Promoting multi-stakeholder engagement

36. Participants highlighted the lack of opportunities across Asia for the stakeholders who make up the business and human rights movement — including civil society organizations, affected communities, businesses, NHRIs, trade unions, investors and representatives of Governments — to meet and openly discuss challenges and ways to overcome them. The Asia Forum itself demonstrated how effective such exchanges are to all stakeholder groups.

37. It was recommended that Governments should foster a climate of meaningful, multi-stakeholder engagement. The development of a NAP could be used as one vehicle to achieve this. Governments should welcome the NAP process as a practical way to engage with civil society, companies and others on identifying ways to overcome adverse business-related impacts that impede development and long-term prosperity. Regional bodies, such as ASEAN, also have a leadership role to play to promote multi-stakeholder engagement in the development of NAPs by their members. In addition, open dialogue would allow businesses across Asia to better understand their human rights responsibilities and identify leading practices to allow them to prevent, mitigate or remedy harms and better manage human rights risk throughout their operations.

38. It was noted that where the dialogue between business entities and civil society organizations is less advanced, governments have a particularly useful role to play. This may also support companies that are already incorporating the corporate responsibility to respect human rights in their operations. Governments need to show leadership by putting human rights firmly on the corporate agenda. Furthermore, much more attention needs to be given by Governments, business associations and human rights experts to the roles, responsibilities and challenges facing small and medium sized enterprises (SMEs), which are the backbone to many Asian economies.

39. One side session put together by organizations from Japan examined the challenges faced by the Japanese Government and businesses operating in that country in implementing the Guiding Principles. It was noted that moving forward on the Guiding Principles presents opportunities for more effective realization of the sustainable development goals and establishing trust between various stakeholders, as well as an opportunity for Japan as the region's G7 country to show leadership on business and human rights.

B. Business

40. Forum discussions relating to the second pillar of the Guiding Principles — "the corporate responsibility to respect human rights" — focused predominantly on the following areas: (i) systemic challenges faced by companies in Asia in implementing the Guiding Principles; (ii) human rights due diligence in specific sectors; (iii) the value of multi-stakeholder and sector-wide approaches to human rights due diligence; and (iv) corporate reporting on human rights.

1. Systemic challenges faced in implementing the Guiding Principles

41. A considerable, systemic challenge in achieving wide uptake of the Guiding Principles by business in Asia is the prevalence of large informal sectors in many of the region's economies, as well as the challenges presented by the level of economic development in many countries.

42. At the enterprise level, lack of awareness of the Guiding Principles and poor understanding of how the corporate respect for human rights pillar should translate into practice was consistently cited.

43. In addition, while Asian businesses face a greater expectation from actors such as consumers, NGOs and the UN to act responsibly, which may make them more susceptible to adopt the Guiding Principles, other pressures may undercut progress. One example concerns the practice of transnational corporations and the cost-reducing pressures imposed on Asian suppliers, which have a negative impact on labour conditions.

2. Human rights due diligence in specific sectors

44. The Forum included sessions on human rights due diligence processes across different sectors, including the garment and ICT sectors, as well as in the context of land acquisitions across Asia. It also examined the role of multi-stakeholder initiatives.

45. Discussions on protecting and respecting **human rights in the garment sector** in Asia highlighted a number of observations, lessons and recommendations:

(i) Freedom of association is critical, but corruption remains a big hurdle;

(ii) Only a small percentage of the workforce is unionized even in countries where the Government has adopted the core ILO Conventions. Few workers have written contracts, making them vulnerable if there are disputes with employers, or making it impossible for families to get compensation if they die at work;

(iii) Workers are often hired via third parties, they do not get even the legal minimum wage or receive any social security arrangement;

(iv) The garment sector is heavily dominated by female workers, many of whom have left their communities to work in factories in cities and are especially vulnerable to abuse;

(v) Long-term relationships with suppliers and trade unions and increased transparency can produce more sustainable supply chains. However, disclosure of the whole supply chain is often not practically possible, due to the high number of suppliers;

(vi) Brands should play a bigger and more active role in using their leverage to improve the conditions of workers;

(vii) Governments and businesses across Asia should act on their respective duties and responsibilities under the Guiding Principles in the context of Global Goal 8 for Sustainable Development – "decent work and economic growth"[11].

46. Developments in Jordan were given as an example of how progress is possible. Before 2010, 80 percent of those working in the country's garment sector were migrant workers who could not join a collective bargaining arrangement. However, in 2010 the law was changed, enabling migrant workers to join a union and elect leaders, although issues remain with regard to implementation of ILO Conventions. A 2013 sectoral agreement covering all workers in the export supply chain outlined comprehensive conditions for work and living conditions in Jordan's garment sector for the first time. While there was reluctance from employers initially, they soon realized that the process, which is being overseen by the ILO, gave them a platform for dialogue with workers. As of 1 August 2017, the calculation of benefits will be non-discriminatory between Jordanian and migrant

[11] http://www.globalgoals.org/global-goals/good-jobs-and-economic/

workers. It was noted that although much more needs to be done, the action of the Jordanian Government has helped to create a more level playing field for companies in this instance.

47. **In the context of land acquisitions**, it was noted that Government actors are often complicit in and benefit from land acquisitions that take place without meaningful consultation or adequate compensation for affected communities; or they fail to enforce existing laws meant to protect rights-holders. In the absence of strong governance systems and enforcement of national regulations to protect affected communities, there is an expectation that business enterprises should be more proactive and not only respect the law but also bring in higher standards with respect to environmental and social impact assessments, stakeholder consultations, and resettlement compensation remediation.

48. Another key point is that land acquisitions are a complex issue because land is part of the identity and culture of so many communities in Asia (both indigenous communities and small scale farmers), and in many Asian countries (such as in South-East Asia) the local population depends on land and water for its livelihood. Thus, land cannot be viewed as a mere commodity. Resettlement should be avoided at all costs. Speakers also noted that cultural considerations must be included in any process of consultation or resettlement. One example highlighted a complex resettlement process of an indigenous community in Asia where a company was developing a natural gas field and needed to remove sacred stones. This produced the lesson that "it is harder to move the dead than the living."

49. Free prior informed consent (FPIC) also has implications for the company's human rights due diligence process especially as it implies meaningful consultations prior to approval of land acquisitions or projects. FPIC is a key principle for indigenous peoples, but it is often misunderstood or done inadequately. At present, most consultations that do take place are carried out after the project has already been approved or after the business operations have already started. Given the lack of consultation, there is no management plan to prevent or mitigate harm, leading to conflicts and rising costs for all stakeholders including business. Speakers noted that to ensure meaningful consultations, businesses must dedicate enough staff and resources and invest in this process early on. Consultations must also include all groups within a community, in particular women.

50. The discussion on human rights in the **ICT sector** highlighted that all human rights are potentially relevant – from labour rights and issues arising from conflict minerals in the supply chain to the right to privacy. Participants examined the key issues for this sector in Asia, in particular digital surveillance, the right to privacy and freedom of expression online, and internet access for the poor. They reiterated the clear expectation – as set out in the Guiding Principles – that companies across all sectors should have in place appropriate due diligence policies to identify, assess, prevent and mitigate any adverse impacts. Participants also discussed how the ICT sector can contribute to respect, protection and fulfilment of human rights and the role of new "disruptive" technologies.

3. Sector-wide and multi-stakeholder approaches to human rights due diligence:

51. From the outset, participants spoke of the need for more direct business engagement on human rights especially with civil society actors. Sector-wide and multi-stakeholder approaches to human rights due diligence were seen as a particularly promising means of achieving progress.

52. Business speakers emphasized that multi-stakeholder engagement is a key part of corporate human rights due diligence efforts, and noted that the Guiding Principles have provided a common reference point for such dialogue.

53. Multi-stakeholder engagement relies upon trust, a commitment to problem solving, and open two-way communication. In most settings, capacity-building is needed to allow

all relevant parties to participate, and often there is a need for third party involvement or convening.

54. Common challenges that multi-stakeholder initiatives and platforms can help manage include situations where it is not always easy for certain individuals to speak with a counterpart, especially one who is perceived to be more senior or from a completely unrelated field. Such platforms can also provide a space for vulnerable persons, such as human rights defenders who face repressive conditions, to share valuable information with companies that gives a more accurate assessment of the issues on the ground.

55. If the company is directly or indirectly involved in a human rights harm, it was acknowledged that it is more constructive and better for companies to talk with affected communities who are making complaints and raising issues rather than to mainly manage media relations when issues escalate.

56. The experience of sector-wide human rights impact assessments through multi-stakeholder engagement in Myanmar was provided as a potential lesson in other contexts. The influx of foreign investment after the lifting of economic sanctions in the country presented an opportunity to change business and Government practice. Here the involvement of a neutral organization – positioned between the "golden triangle" of government, business and civil society – had played the role of a proxy voice in a situation where the stakeholders had little experience with talking directly to each other. This had helped reduce friction and understanding especially on issues where the different sides traditionally did not trust one another. Sector-wide programmes in the ICT, tourism and oil and gas sectors have shown that there was huge appetite for multi-stakeholder engagement and dialogue. However, given its novelty, external support had been needed. Another challenge was to get companies to understand that they have a responsibility to respect human rights. The complexity of the issues against the need to keep it simple and easily understood in the local language was another significant challenge. The term "collaboration" was cited as the determining success factor for human rights due diligence.

57. The links to the OECD system were also highlighted. It was noted that due diligence is the "name of the game" for the OECD Guidelines for Multinational Enterprises, which include a chapter on human rights that is directly based on the second pillar in the Guiding Principles. The OECD Guidelines require adhering governments to establish non-judicial complaint mechanisms ("the national contact points").

58. While there are only a few signatory governments in Asia, it was noted that the Guidelines are very relevant for the region, since their scope include supply chains and cover a number of business contexts, such as palm oil exported from Asia to OECD countries, OECD countries' investments in Asia, and Asian investment in the USA and Europe. By their integration in the OECD Guidelines, the Guiding Principles are also directly applicable in such contexts.

59. In order to clarify practical implications of due diligence, OECD is preparing sector guidance in different sectors: already there is guidance covering conflict minerals and agriculture, and similar guidance is in progress for the textile and financial sectors.

60. With regard to sectoral due diligence approaches of relevance to Asia, it was suggested there is an obvious need to create new multi-stakeholder partnerships: in particular, a living wage alliance covering the textile sector, an "anti-haze" alliance to tackle the devastating environmental impacts from forest fires to clear land for commercial purposes, and an alliance on responsible recruitment in the construction sector. For such initiatives to be successful, it was stressed that companies must step forward and recognize their responsibility to prevent and address adverse impacts, including those occurring beyond the first tier of suppliers. It was noted that the Guiding Principles clarify once and for all that companies can no longer hide behind the excuse of their complex and multi-

layered supply chains. For such multi-stakeholder initiatives to be effective, participants stressed that collaboration with Asian governments was critical. A practical point concerned how to construct multi-stakeholder initiatives. Depending on the circumstances, they may be set up from the ground as "bottom-up" initiatives, or through existing networks. Depending on the type of issue or challenges, they may involve companies in one particular industry or companies across industries, either within or across regions.

4. Transparency

61. In order to know and show that they respect human rights, there is increasing focus on the importance of companies reporting on their human rights impacts. It was noted that across Asia, there is more and more corporate reporting on non-financial information such as on ESG sustainability, which includes elements of human rights issues. This is thanks in part to requirements from stock exchanges and, to a lesser degree, regulators and pressure from investors such as pension funds.

62. Speakers argued that the next step is to increase the amount and quality of human rights reporting. However, there are a number of challenges in achieving this, such as overcoming the burden that increased reporting would impose on companies, especially SMEs which have fewer resources, to disclose more detail and meaningful information on their human rights impacts. In addition, panellists explained that negative campaigns by NGOs and media stories about a company's conduct – however legitimate – can result in more companies being less willing to report publicly on its human rights impacts.

63. Regulation can help ensure that companies that are not in the spotlight to report publicly on human rights. However, much is still needed to build the capacity of regulators across Asia for this to happen. Panellists made recommendations on how to increase the amount of human rights reporting, including having regulators prepare guidance on how companies report on human rights; the possibility of creating a league table on company disclosure and environmental impact assessments; and not delinking human rights reporting from existing ESG reporting.

C. Civil society and affected stakeholders

64. As well as focusing on engagement with Governments and business, the Forum sought to promote the role of civil society organizations including NGOs, trade unions, campaigners and human rights defenders and, crucially, to hear the voice of victims and affected communities. Throughout the Forum discussions, it became clear that a lot more capacity-building is needed in order to strengthen the role and impact of civil society to drive more responsible business conduct. Participants repeatedly made the point that, bar notable exceptions, civil society organizations across Asia largely struggle to engage meaningfully on business and human rights issues and with the key players – Governments and companies – due to a lack of expertise, experience and capacity. Building capacity to improve this is sorely needed to allow for more targeted advocacy campaigns and collaboration with business to garner positive results and help put the business and human rights agenda firmly on the map.

65. At the same time, the Forum examined the plight of directly affected stakeholder groups who are particularly vulnerable to business-related human rights harm in Asia, namely: (i) Migrant workers; (ii) Indigenous Peoples; and (iii) human rights defenders.

1. Migrant workers:

66. Migrant workers are a dominant feature of the labour market in Asia and the harms they suffer were a large feature of the Forum. According to the 2015 International Labour

Organization statistics, Asia-Pacific hosts 17.2 percent of migrant workers worldwide (some 25.8 million persons).[9] For example, the Arab States – many of which were included in the focus of the Asia Forum - have the highest proportion of migrant workers to all workers (35.6 per cent) and hosts 11.7 per cent of migrant workers worldwide, most of them from Asia.

67. It was noted that migrant worker abuses often start in countries of origin and continue in countries of destination. Migrant workers are vulnerable at every location and at all stages of the process to gain work. In the construction sector in the Gulf region, NGO reports have highlighted huge exploitation in the recruitment process of migrant workers, such as fees paid to get recruited, passports confiscated, poor living conditions, forced labour with threat of penalties such as deduction of pay, prevention of returning home, reported to the police as "absconded workers". In addition, trade union access is poor. Meanwhile, in the textiles sector, migrant workers across Asia urgently need to be afforded the same labour rights, wages, conditions and equal treatment as employees who are citizens of a country. By engaging in discussions with independent trade unions, employers and companies create legitimate partners to ensure complaints are managed and do not cause disruptions to production and reputational risk.

68. In addition, the Forum explored the challenges faced by domestic workers, who are mostly women. For example, in Qatar 90 percent of domestic workers are female. Across the Gulf region only Kuwait has a law on domestic workers. Harms faced by domestic workers in the region include passport confiscation, sexual abuse and bonded labour whereby employers often think they own the worker after they paid thousands of dollars to bring the domestic worker to their country.

69. Forum participants discussed the following ways to protect migrant workers:

(i) The prohibition of recruitment fees to jobseekers;

Mechanisms to monitor this and greater efforts by companies at direct hiring practices;

(ii) More training and information sharing on rights of migrant workers by Governments in countries of origin and destination, such as the Philippines. Greater cooperation between these Governments is also needed;

(iii) More focus on the health of migrant workers, especially after they have arrived in countries of destination and throughout their stay;

(iv) Pro-active efforts by companies to use their leverage across their supply chain to ensure responsible recruitment and treatment of migrant workers.

70. Standard contract, greater law enforcement, better labour inspections and awareness-raising on the part of migrant workers themselves to their rights is required.

2. Indigenous Peoples

71. Two thirds of the world's indigenous peoples live in Asia, which is home to more than 2,000 civilizations and languages. Government and business good practice when it comes to ensuring indigenous peoples' rights is the exception not the rule in Asia. Discrimination against indigenous communities and certain members, including women, is a challenge. Representation and empowerment of IPs requires careful thought. The meaning

[9] http://www.ilo.org/asia/areas/labour-migration/lang--en/index.htm.

[10] http://www.un.org/esa/socdev/unpfii/documents/2014/press/asia.pdf.

of FPIC is still being debated, and in some Asia countries "consent" is substituted for "consultation".

72. From the perspective of a company, engagement activities with indigenous communities – and applying the principles of free, prior and informed consent (FPIC) – take time and require careful thought to ensure trust, clear two-way communication, and the identification of real issues and the people most at risk of suffering harm. It is, however, increasingly considered essential to the long-term success of the company's operation.

73. A particular challenge in relation to indigenous peoples' rights is land acquisitions by business enterprises. The Asia Indigenous Peoples Pact noted that over 70 percent of some 500 complaints received by affected indigenous communities in the past few years were related to land acquisitions and business operations. Indigenous peoples have a special relationship with three natural resources that are of key business interest: forests, water and minerals. In this regard, there are three common issues: (i) a lack of understanding of what land means for indigenous peoples versus an understanding of land as mere property; (ii) a lack of understanding of what IP rights, and in particular their collective aspects, are. FPIC is also widely misunderstood, and (iii) IP women are particularly affected by the loss of land as they are often responsible for the community's livelihoods. In addition, land grabbing is often accompanied by or takes place in a context of militarization (or the use of private military companies) whereby violence against women increases.

3. Human rights defenders

74. A session on human rights defenders explored three separate circumstances in which human rights defenders had been targeted for exposing: abuses and slave-like conditions in the Uzbek cotton growing industry; judicial persecution and extra-judicial killings of land rights defenders in the Philippines; and the challenges facing migrant workers, notably those from Nepal, who work in Gulf countries, South Korea and Hong Kong. Defenders increasingly suffer from selective prosecution and trumped-up charges against them and threats to their lives and livelihoods.

75. The panellists put forward the following concrete recommendations to help ensure that the rights of defenders are protected and that there is more willingness on the part of companies and Governments to accept their work as legitimate early warning signs on the harm that business activities can lead to:

(i) States should enact domestic legislation in accordance with the UN Declaration on Human Rights Defenders[18] to recognise and protect the rights of defenders;

(ii) NAPs should bear in mind remedy and accountability mechanisms for Governments and businesses;

(iii) Complaint systems should guarantee non-reprisals, non-deportation, and general human rights protections;

(iv) More effort and consideration – such as through the development of technology - should be given to create urgent alert assistance, protection and support for human rights defenders at threat, including trial observation with priority for indigenous peoples, women, migrant workers and rural people;

[18] http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx

(v) Companies, via their associations, should be encouraged to develop broader industry-specific and pro-active commitments to combat human rights abuses and the targets against defenders, instead of a passive "do no harm" policy;

(vi) International finance institutions and institutional investors should exercise greater due diligence to ensure that their funded-projects do not contribute to business-linked human rights abuses and reprisals against human rights defenders.

D. National Human Rights Institutions (NHRIs)

76. The Forum included a number of discussions on the importance of NHRIs in Asia in promoting the business and human rights agenda. Participants said that NHRIs can play an important role in raising awareness and facilitating discussions with key stakeholders, including Government, business and vulnerable groups. In addition, NHRIs play a central role in helping States and companies move forward in implementing the Guiding Principles and in developing a NAP. For example, the National Human Rights Commission of Thailand has translated the Guiding Principles into Thai, produced a handbook on human rights due diligence and led a project aimed specifically at the Thai tourism industry. Meanwhile, the National Human Rights Commission of Indonesia drafted its country's NAP, which is under review by the Government. Participants argued that where political leadership is lacking, NHRIs should in conjunction with civil society – and with Government and business input – kick start the NAP development process.

77. However, there are important challenges that need addressing. For example, some NHRIs do not have a sufficient mandate to examine the activities of the private sector, and a Government may not accept or take ownership of a NAP that has been developed by the country's NHRI. In addition, speakers reiterated that it is difficult to speak about NHRIs as one body. They exist in different jurisdictions, and have different mandates, resources and tools at their disposal.

78. In general, Asian NHRIs face a set of common challenges: a lack of autonomy and independence from the Government; a lack of authority and trust to deliver on their promise; and a lack of financial resources. At the same time, many NHRIs have a mandate to provide a grievance mechanism for business-related human rights complaints and the Forum discussed how to strengthen their role. In this regard, it was felt that NHRIs are in a fairly unique position to investigate allegations of abuses and focus on conciliation and mediation between victims and accused parties. They are useful in situations where access to the courts is limited, but this can overload them with cases.

79. Strengthening NHRIs as grievance and remedy mechanisms requires better awareness of and access to NHRI mechanisms, removing both practical and legal hurdles to their use, as well as better coordination between NHRIs in cross-border cases, both bilaterally and through regional and sub-regional networks. While civil society reports a number of positive experiences with NHRI grievance mechanisms, there are still critical gaps in their powers and accessibility, especially for vulnerable groups such as indigenous people and inhabitants of remote rural areas. Home- and host-state NAPs should commit to strengthening the provision of remedy through NHRIs and through multi-NHRI cooperation in line with the Guiding Principles. In relation to adverse human rights impacts on indigenous peoples and small-scale farmers arising from land acquisitions it was noted that some NHRIs in Asia have played a constructive role in handling complaints, including with regard to cases with extra-territorial implications (for example, the Thai, Malaysian, Indonesian and Philippines NHRIs). At the same time, it was noted that many others are not active at all on these issues. In the absence of State-based remedies, communities and NGOs have explored avenues of complaints outside of the State, with some success, going up the supply chain and bringing complaints up to regional organizations and NHRIs in third countries. The role of these institutions could be explored further.

VI. Spotlight on mega sporting events

80. The Forum included two sessions on the impact of mega sporting events in Asia on human rights. Part 1 focused predominantly on the human rights issues associated with upcoming events such as the Tokyo 2020 Olympic and Paralympic Games, the PyeongChang 2018 and Beijing 2022 Winter Olympics, the Qatar 2022 World Cup, as well as recent competitions including the 2016 F1 Bahrain Grand Prix, the 2010 Delhi Commonwealth Games and the 2008 Beijing Olympics. Part 2 focused on the human rights issues surrounding the Qatar 2022 Men's World Cup and the role of FIFA, as the global governing body, in addressing existing adverse impacts and ensuring respect for human rights across its operations and future tournaments.

A. Three main points from the Part 1 session

(a) Sport is a celebration of human achievement and clearly aligned with human rights. Ensuring the protection of, and respect for, human rights at the highest level is no longer a choice but an agreed basis upon which States, sporting committees, and business must proceed to organize mega sporting events in Asia. However, in order to ensure that this commitment translates into concrete action, on-going engagement with those most affected by human rights violations and abuses is imperative;

(b) Momentum for reform to effect change at an international level in mega sporting events in Asia is now there. At the same time, history has shown us that human rights relating to land acquisition, labour, health, freedom of expression and association, have too often been abused. In order to ensure this momentum leads to action in the years ahead, on-going concerted efforts - including through primary contractors using leverage in their supply chains, as well as securing effective remedies - is required;

(c) Moving forward, on-going multi-stakeholder consultation between government, business, trade unions and civil society is necessary to ensure the spirit of sport and the beauty in the game translates into a firm commitment to ensuring the dignity of workers and communities wherever these events take place. In the future, this should begin from the bidding process for games/competitions, continue through its life cycle and become part of the ecosystem of mega sporting events.

B. Three main points from the Part 2 discussion

(a) Football has been described as 'the beautiful game' and evokes emotions unlike any other sport. FIFA as the association at the heart of the game has now committed, through its explicit recognition of the Guiding Principles, to secure systemic changes and greater transparency to set an example of how global sports administration and the management of mega sporting events can secure a corporate responsibility to respect human rights for all those involved in the game;

(b) The 2022 World Cup in Qatar provides an important opportunity for the treatment of migrant workers and workers more generally to become a benchmark for the entire Gulf and Asia region. In this regard, FIFA, the Qatar Supreme Committee for Delivery and Legacy and the Local Organizing Committee in Qatar stated their commitment to ensuring that the dignity, security, health and welfare of workers and communities engaged in the mega sporting events remains paramount, including throughout supply chains. However, this now needs to translate into concrete action, including monitoring, implementing and tracking of this commitment becoming a reality;

(c) In addition to being forward-looking, the approach adopted by FIFA and local organizing committees needs to look back. Grievance mechanisms, which secure effective remedies for victims of adverse human rights impacts and which will safeguard the human dignity of all involved in mega-sporting events needs to remain principal on the agenda to secure real change. Stakeholder engagement needs to be increased and both FIFA and the Supreme Committee stated their commitment to this engagement moving forward.

VII. Conclusions and recommendations from the Working Group

81. **The Working Group was encouraged by the high interest in and support for the Guiding Principles expressed by the wide range of stakeholders who participated in the Asia Forum. These actors – who include affected individuals, Governments, companies, business associations, employers' federations, NGOs, trade unions, NHRIs, lawyers, investors and academia – form a critical part of the business and human rights movement that is needed to scale up action to implement the Guiding Principles across Asia.**

82. **The discussions at the Asia Forum help inform the Working Group's efforts to fulfill its mandate and promote effective implementation of the Guiding Principles worldwide. Based on the inputs from participants, the Working Group would like to make the following overall observations and recommendations:**

(a) **Asia's economic development has been fast paced and has brought massive results. These economic achievements have, however, also left some people behind. The Regional Forum heard about the harsh conditions faced by workers in a range of sectors, including female workers in global garment supply chains, migrant workers, workers in the informal sector, and small-scale farmers and indigenous communities evicted from their land, among others;**

(b) **At the same time, the civil society space (including the space for human rights defenders to play their vital role and the space for freedom of association and collective bargaining) is limited and shrinking;**

(c) **Strengthening the human and social aspects of economic development is critical. Sustainable development is only possible with human rights at the core, which will require a rebalancing of the economic and social pillars.**

83. **There is a need for greater collaboration, new partnerships and concrete action by Governments and companies in Asia to fulfill their respective duties and obligations under the Guiding Principles. Multi-stakeholder engagements involving civil society, business, governments, regional organizations and others hold promise, but they must concentrate on addressing the key human rights challenges.**

84. **As a follow-on from the Asia Forum, the Working Group would like to encourage the creation of properly mandated and resourced initiatives to establish multi-stakeholder alliances to address salient issues in Asia, such as to secure living wages for workers in supply chains, and to protect migrant workers in the context of their recruitment and living conditions and in sectors and countries where they are especially vulnerable.**

85. **All stakeholder groups at the Asia Forum stressed the importance of national action plans on business and human rights (NAPs). These are seen as a means to initiate critical multi-stakeholder engagement, strengthen accountability and access to remedy, and ensure that human rights become an integral part of a country's efforts to promote economic growth and development. The Working Group calls on all Asian States to develop a forward looking NAP to implement the Guiding Principles – be it a**

stand-alone document or a plan that is incorporated in a similar high-level strategy, through transparent and inclusive processes that involve all relevant stakeholders, including business, civil society and affected individuals.

86. The Working Group welcomes the work already done by some NHRIs in the region to promote implementation of the Guiding Principles. It would like to encourage NHRIs in all Asian countries to give more focused attention to the area of human rights and business and promote implementation of the Guiding Principles, including by building their own capacity and that of other stakeholders and supporting the development of NAPs in their respective countries.

87. The Working Group is concerned by reports of continued — and in some instances, increasing — adverse business-related human rights impacts across Asia, including relating to the difficult situation of human rights defenders; the negative impacts on the human rights of communities affected by land acquisitions; the harms suffered by migrant workers in countries of origin and destination; and the violations of core labour rights.

88. The Working Group calls on all Asian States and business enterprises in the region — both domestic and transnational corporations — to meet their respective duties and responsibilities set out in the Guiding Principles: the State duty to protect against human rights abuse, the corporate responsibility to respect human rights and the need to enhance access to remedy for victims. It also calls on home States of transnational corporations to play a more active and constructive role. Other actors, such as regulators, investors and business associations can play a positive role in demanding greater transparency by companies in reporting on human rights risks and impacts, including on how they are being addressed, in line with the Guiding Principles.

89. Regional organizations, such as the Association for Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC), should play a bigger and more prominent part in promoting implementation of the Guiding Principles and ensuring that focus on economic growth does not ignore human rights. UNDP, UNESCWA and UNESCAP can also play a leadership role in promoting the Guiding Principles, including by ensuring alignment and coherence in the context of 2030 Agenda implementation efforts.

90. A particular focus of the Working Group's current work is the need for States to "lead by example" and implement the Guiding Principles in the context of their role as economic actors, such as with regard to State-owned enterprises. This is of high relevance in the context of Asian economies and "state-capitalism", and the Working Group encourages all Asian States to take note of its main report to the 32nd session of the Human Rights Council (A/HRC/32/45) in that regard.

91. The Working Group is particularly concerned by the lack of progress in ensuring access to effective remedy for victims of business-related human rights abuse on the part of Governments and business enterprises. It calls on States to meet their duty to ensure access to effective remedy, through judicial and non-judicial mechanisms, including by addressing barriers to access to justice and strengthening the independence and capacity of the judiciary. All States should implement the recommendations from OHCHR's initiative on accountability and remedy in cases of business involvement in human rights abuses. Companies should establish or take part in joint efforts to set up operational-level grievance mechanisms for directly affected stakeholders that are in line with the effectiveness criteria set out in the Guiding Principles (GP 31). International financial institutions financing operations in

Asia should ensure their grievance and accountability mechanisms are aligned with the Guiding Principles and enable stakeholders to raise concerns without reprisals.

92. The Working Group encourages civil society organizations across Asia to push for Governments to develop NAPs to implement the Guiding Principles and to use and submit information to international human rights mechanisms, such as the Universal Periodic Review (UPR) process, the special procedures of the Human Rights Council and the UN human rights treaty bodies, to raise awareness of business-related human rights impacts in the region, and strengthen the calls on States and businesses to implement the Guiding Principles.

93. The Working Group seeks to organize more regional forums, as the events provide unique platforms for multi-stakeholder dialogue, convening – often for the first time – key stakeholders across a region, so that they can: (i) engage together in a process designed to identify existing challenges to human rights posed by business operations in their region; (ii) consider how the Guiding Principles can be implemented in the best way to address those challenges; (iii) galvanize follow-up action on the issues identified at the regional forum; (iv) and inform global discussions at the annual Forum on Business and Human Rights and efforts to speed and scale up implementation of the Guiding Principles globally.